

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4962 of 1987

with

CIVIL APPLICATION NO. 600 OF 1988.

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BALVANT SHIBABHAI

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioners
MR VB GHARANIA AGP as instructed by M/S PATEL ADVOCATES
for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/09/1999

ORAL JUDGEMENT

Heard the learned advocates. The present petition is filed by the petitioner claiming benefit of regularization on the basis of the Government Resolution

dated 16th November, 1973 and on the basis of the settlement arrived at between the Union and respondent No. 2 dated 7th September, 1986 which has been intimated by the respondent No. 2 under his letter dated 16th September, 1986. The prayer of the petitioner in para 12(a) is to issue direction to the respondents to implement Annexure "C" & "D" immediately. Annexure "C" is a letter dated 16th September, 1986 of respondent with which the settlement arrived at between the union and the respondent No. 2 has been annexed by the respondent No. 2. In the said settlement, on behalf of the petitioners, some of the union representatives have signed and the officers from the other side have also signed the same. The respondent has filed reply at page 44. In para 9 of the reply, the respondent submit that the compliance to the settlement dated 7th September, 1999 is fully observed by the respondents as follows :

- "1. More than 70 labourers have been given Order on work charged establishment as per the office order No. EB-1/WC/2515 dated 26.9.86, 2521 dt. 17.9.86, 2531 dt. 18.9.86 and 2854 dt.20.9.86.
 2. The orders under work Charged Establishment have been issued to the labourers who are eligible and fulfil the terms and conditions as laid down in Government of Gujarat, P.W.D. Resolution No. DRE/1673/14/G dt.4.7.73 and DRE/1673/14/G dt. 16.11.73.
- As per Government orders period completed upto 1983 orders are given.
3. As above and now onwards according to the prevailing scarcity and tight position of the funds and also because of the instructions of the State Government no recruitment is to be made to any post to observe financial discipline.
 4. The necessary orders have already been issued after 7.9.86 to about 100 daily wagers which is definitely more than 70."

The petitioner has filed rejoinder and denied the said statement which was made in the affidavit in reply filed by the respondents.

According to the statement annexure "A" to the petition produced by the petitioners, almost all the

petitioners were working as daily wagers from 1979 to 1984 and continuously working thereafter. Now, at least more than 15 to 20 years, they are working as daily wagers and no benefits of regularization of their service has been carried out by the respondents inspite of the circular dated 16th November, 1973. When the respondents have agreed with the union by settlement dated 7.9.1986, it is the duty of the respondents to implement the said settlement in its letter and spirit. It is true that the respondents' case is that they have implemented the settlement fully and more than 70 labourers have been given order on work charged establishment as per the office orders dated 16th September, 1986, 18th September, 1986 and 20th September, 1986 by taking into consideration the Government Resolution dated 16th November, 1973. The respondents also further pointed out that as per the Government's orders, period completed upto 1983, orders are given and necessary orders have also been issued after 7th September, 1986 to about 100 daily wagers which is definitely more than 70 labourers. In view of these facts and considering the rejoinder filed by the petitioners, it is not certain as to whether the respondents have implemented the settlement and the past orders in favour of the petitioners while granting benefit of regularization of their service according to the Government Resolution dated 16th November, 1973. Mr. Qureshi, learned advocate appearing for the petitioner has relied upon the decision in case of Chief Conservator of Forests and another etc. v. Jagannath Maruti Kondhare etc. reported in AIR 1996 SC 2898. In the said decision, the Hon'ble apex Court has decided the question of permanency and status of casual employees and held that in an employment for 5/6 years, and worked for period ranging from 100 to 300 days, continuation of casual for long years, it can be inferred that it was with object to deprive them the status of permanent employees. It has been also held that the burden does not lie upon workman to establish that object of employer; relief of regularization with all benefits of permanent worker cannot be refused on the ground of financial strain of State Exchequer. The respondents have also pointed out the same thing in reply as about now according to the prevailing scarcity and tight position of funds and because of the instructions of the State, no recruitment is to be made on any post to observe the financial discipline. The apex Court has considered the question of regularization of service in case of Arun Kumar Raut and others v. State of Bihar and others reported in AIR 1998 SC 1477. The apex Court held that the termination of daily wagers on the ground that the initial appointments were irregular, the daily wagers

had served the department initially without getting any salary for a long time and they are not guilty of any fraud and do not lack requisite qualification. They were in continuous service of the department for more than five years. The daily wagers deserve sympathetic consideration.

In view of the decision of the apex court and the circular dated 16th November, 1973 and the subsequent Resolution of the Government dated 17th October, 1988, it is the duty of the respondents to give benefits to the petitioners while implementing the said circular in their favour if they are otherwise eligible and qualified according to the terms of both the circulars and also considering the settlement dated 7th September, 1986.

Therefore, in view of these facts, and the observations made hereinabove, I direct the respondents to implement the settlement dated 7th September, 1986 considering the Government Resolution dated 16th November, 1973 as also the Government Resolution dated 17th October, 1988 and grant all the benefit of regularization of service of the petitioner which are available to the petitioner under the settlement and the two resolutions referred to hereinabove.

This petition is accordingly allowed. The respondents are directed to extend the benefits available to the petitioners in view of the settlement dated 7.9.1986 as also the Government Resolution dated 16th November, 1973 and 17th October 1988 within four months of the receipt of writ from this Court, if not granted so far. It is, however, clarified that if the respondents have already granted the said benefits to the petitioners in terms of the settlement dated 7.9.1986 as also the Government Resolution dated 16th November, 1973 and the Government Resolution dated 17th October, 1988, then the same not be granted again. Rule is made absolute in aforesaid terms with no order as to costs.

In view of the above order, civil application No.600 of 1988 will not survive. Same is, therefore, disposed of accordingly with no order as to costs.

22.9.1999. (H.K.Rathod,J.)

Vyas